



## New Jersey Concrete and Aggregate Association

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**William F. Layton**  
Executive Director

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MSHA  
U.S. Dept of Labor

June 3, 2002

Via Facsimile at 703-235-5551 and Regular Mail

Mr. Marvin Nichols  
Director, Office of Standards, Regulations & Variances  
Mine Safety & Health Administration  
U.S. Department of Labor  
4015 Wilson Blvd., Room 63i  
Arlington, VA 22203-1984

Dear Mr. Nichols:

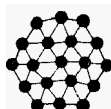
I am pleased to submit these comments on behalf of the New Jersey Concrete and Aggregate Association concerning the Mine Safety & Health Administration's ("MSHA") Advance Notice of Proposed Rulemaking ("ANPRM") related to occupational exposure to asbestos published in the March 29, 2002 Federal Register. The New Jersey Concrete and Aggregate Association has 110 members employing over 15,000 people in the State of New Jersey. Association members are involved in the production of ready mix concrete, stone, sand and gravel.

By this letter, I am requesting that these comments be included in the formal rulemaking record. In addition, the NJCAA fully endorses the comments and oral testimony that will be presented by the National Stone, Sand & Gravel Association ("NSSGA") concerning this rulemaking during the comment period.

The NJCAA shares MSHA's desire to protect the health and safety of all miners, and recognizes the need to control hazardous exposures to asbestos-containing products and materials. We support lowering the Permissible Exposure Limit ("PEL") to 0.1 f/cc, provided that only real asbestos is regulated in the new standard. It is critical that MSHA employ the appropriate definitions, and sampling/analytical methods so that other minerals (e.g., non-asbestiform varieties of the asbestos minerals) are not subject to unwarranted regulation, or inadvertently included in the sampling conducted for enforcement purposes.

Therefore, MSHA must adopt a discriminate fiber counting method that more accurately corresponds to asbestiform minerals. The current federal fiber definition (particles that are at least five microns long and have a minimum aspect ratio of 3 to 1) will count as "fibers" cleavage fragments that are common particles in mining dust. Because the environment at mines is so different from the environment that OSHA regulates, MSHA cannot simply adopt the current OSHA standard, with its "federal fiber" definition. Phase Contrast Microscopy is insufficiently sensitive to distinguish between different minerals, however, with appropriate discriminate counting rules, it could serve as an effective tool for screening samples for asbestiform fiber content. To properly classify the asbestiform fibers on a sample, it is necessary to use electron microscopy analysis. Similarly, any regulation of "take home contamination" must focus on the true asbestos and asbestos containing products, as defined in the OSHA and EPA asbestos standards, rather than applying such requirements to all and any level of mineral exposures at mines, pits and quarries.

In addition, MSHA must critically review the technical and economic feasibility of any future asbestos standard in accordance with the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. Moreover, MSHA must comply with the new U.S. Department of Labor guidelines for

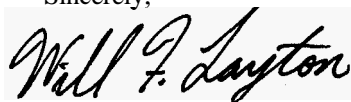


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ensuring and maximizing the quality, objectivity, utility and integrity of information that forms the basis for regulatory decisions. See DOL Draft Information Quality Guidelines, published May 1, 2002.

Inappropriate or arbitrary decisions as to the classification of minerals, based on flawed scientific conclusions, could well undermine the ability of many small mines to remain in business, while at the same time failing to provide any health benefits for miners. Thank you for your consideration of our perspective.

Sincerely,

A handwritten signature in black ink, reading "Will F. Layton". The signature is written in a cursive, flowing style. It is positioned over a light gray rectangular background.

William F. Layton, Executive Director  
New Jersey Concrete and Aggregate Association



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